[GB] New Defamation Act Clarifies Defences to Defamation Claims

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On 25 April 2013, the Defamation Act 2013 completed its passage through Parliament with the Royal Assent. The Act aims to correct serious problems for all types of media caused by the UK's law of defamation that allows individuals and companies to sue for allegedly defamatory statements; it does so by a mix of different provisions either clarifying or modifying the existing law. The Act does not attempt to set out any general codification of the law of defamation. Most provisions apply only to England and Wales as Scotland has separate and different legal rules.

The Act provides that a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant, including where the harm has not yet occurred. Harm to the reputation of a business is not "serious harm" unless it has caused or is likely to cause the body serious financial loss.

The Act replaces the old common law defence of justification with a new statutory defence of truth. It does not make a major change in the law, providing that it will be a defence if the imputation of the statement complained about is substantially true. It will remain the case that it is no defence that the statement merely repeats what others have said. The Act also creates a defence of 'honest opinion'. This applies where there is a statement of opinion, where the statement made indicated the basis of the opinion, and where an honest person could have held that opinion. This also reflects the existing law.

A further defence relates to matters of public interest. Here the Act gives statutory form to the so-called Reynolds defence, where the defendant can show that the statement complained of was, or formed part of, a statement on a matter of public interest and that he/she reasonably believed that publishing the statement complained of was in the public interest.

A new rule protects the operators of websites from liability where they can show that they did not post the document on the website, unless the person who had posted it could not be identified by the claimant for defamation and the operator had failed to respond to a request to disclose that person's identity or to take down the document. Power is also given to courts to order website operators to

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take down defamatory material where a defamation action has been successful in court.

Special protection is provided for peer-reviewed scientific or academic journals where it cannot be shown that the publication involved malice, and for reports of the decisions of courts and other official publications.

The Act prevents a defamation action from being brought where the same statement is published again by the same publisher more than a year after the first publication; previously each republication could form the basis of a fresh action.

To avoid 'libel tourism' in which cases are brought in the English courts where there is little link with the UK, the Act specifies that where the defendant is domiciled outside the EU or a state party to the Lugano Convention, the case may only proceed where England is clearly the most appropriate place to bring the action. This test applies even if some damage in England is alleged. The courts will also not be able to hear actions brought against persons other than the author, editor or publisher of the statement unless it was not practicable to bring the action against them.

The Act also provides that cases will normally be decided by a judge alone, not a judge and jury. It will be brought into effect later in 2013.

Defamation Act 2013

http://www.legislation.gov.uk/ukpga/2013/26/contents

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